

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation
of the

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

v.

TERRA LINDA FARMS, a California general
partnership, also doing business as TERRA
LINDA PACKING; and TERRA LINDA
FARMS, a California corporation,

Respondents.

MARIBEL RIVAS and MARIA SANTILLAN,

Complainants.

Consolidated Cases Nos.

E 200506 C-1304-00-rse;
E 200506 C-1324-00-rse

C 06-07-103
C 07-08-003

08-09-P

SUMMARY OF DECISION

In *Dept. Fair Empl. & Hous. v. Terra Linda Farms* (Dec. 9, 2008) No. 08-09-P [2008 WL _____ (Cal.F.E.H.C.)], the Commission held that Terra Linda Farms, a Fresno grower, retaliated against farm labor contract workers Santillan and Rivas, and failed to take all reasonable steps to prevent discrimination from occurring, in violation of Government Code section 12940, subdivisions (h) and (k), of the Fair Employment and Housing Act (FEHA). Analyzing the totality of the circumstances, including the nature of the employment relationship, and the degree of the Terra Linda Farms' control over the terms, conditions and privileges of complainants' employment, the Commission found that Terra Linda Farms was liable as a joint employer for FEHA purposes.

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation
of the

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

v.

TERRA LINDA FARMS, a California general
partnership, also doing business as TERRA
LINDA PACKING; and TERRA LINDA
FARMS, a California corporation,

Respondents.

MARIBEL RIVAS and MARIA SANTILLAN,

Complainants.

Consolidated Cases Nos.

E 200506 C-1304-00-rse;
E 200506 C-1324-00-rse

C 06-07-103
C 07-08-003

08-09-P

DECISION

The Fair Employment and Housing Commission hereby unanimously adopts the attached Proposed Decision as the Commission's final decision in this matter and, by a vote of 4 to 1, designates it precedential, pursuant to Government Code section 12935, subdivision (h), and California Code of Regulations, title 2, section 7435, subdivision (a).

The Commission, *nunc pro tunc*, makes the following typographical corrections to the proposed decision: at page 1, line 3, DFEH Senior Staff Counsel was incorrectly identified in the proposed decision and thus, "Gregory Fisher" is amended to "Nelson Chan" and; at page 6, finding of fact 35, line 7, "July" is amended to "June."

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5, and California Code of Regulations, title 2, section 7437.

Any petition for judicial review and related papers shall be served on the Department of Fair Employment and Housing, the Commission, respondents, and complainants.

DATED: December 9, 2008

GEORGE WOOLVERTON

LINDA NG

CAROL FREEMAN

PATRICIA PEREZ

CONCURRENCE AND DISSENT ON MAKING DECISION PRECEDENTIAL

I respectfully dissent only to the majority's determination to make this decision precedential.

The Commission's regulations provide that the Commission may designate, as a precedential decision, any decision or part thereof that contains a significant legal or policy determination of general application that is likely to recur. (Cal. Code Regs., tit. 2, § 7435, subd. (a).)

While I agree with the majority's determination that respondent Terra Linda Farms and Green Valley Ag, Inc. are joint employers, nonetheless, that determination, which looked at the totality of circumstances in this case, is quite fact-specific. As such, I do not believe that the decision provides guidance of general application on the issue of joint employer liability for other cases with different facts. As I believe that the Commission must be very careful in what cases it deems to be precedential to provide such guidance, not confusion, to parties in subsequent cases, I respectfully dissent on designating this decision as precedential.

DAVE CAROTHERS

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation
of the

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

v.

TERRA LINDA FARMS, a California general
partnership, also doing business as TERRA
LINDA PACKING; and TERRA LINDA
FARMS, a California corporation,

Respondents.

MARIBEL RIVAS and MARIA SANTILLAN,

Complainants.

Consolidated Cases
Nos.

E 200506 C-1304-00-rse;
E 200506 C-1324-00-rse

C 06-07-103
C 07-08-003

PROPOSED DECISION

Administrative Law Judge Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on March 18 through 20, 2008, in Fresno, California. Gregory Fisher, Senior Staff Counsel represented the Department of Fair Employment and Housing (DFEH or Department). Thomas E. Campagne, Esq., and Justin T. Campagne, Esq., of Campagne and Campagne, a Professional Law Corporation, represented Terra Linda Farms. Complainants Maribel Rivas and Maria Santillan, DFEH representative Abraham Mendoza, and respondent's representative Joe Coehlo, attended throughout the hearing. Abel Mena and Veronica Reyes served as Spanish-English interpreters.

After receipt of the hearing transcripts, and the parties' timely filed post-hearing briefs, the last of which was received on September 18, 2008, the matter was deemed submitted.

After consideration of the entire record, the administrative law judge makes the following findings of fact, determination of issues, and order.

FINDINGS OF FACT

1. On June 26, 2006, complainant Maria Santillan filed a written, verified complaint, DFEH No. E 200506 C-1304-00-rse, with the DFEH against "Terra Linda Farm," alleging that, on or about May 12, 2006, Terra Linda Farms retaliated against Santillan by not recalling her to work as a foreperson. The complaint alleged that the reason for the retaliation was that Santillan had supported Maribel Rivas in reporting a sexual harassment complaint against Terra Linda Farms.

2. On June 29, 2006, complainant Maribel Rivas also filed a written, verified complaint, DFEH No. E 200506 C-1324-00-rse, with the DFEH against Terra Linda Farms. Rivas alleged in her complaint that, on or about June 6, 2006, Rivas was denied recall to her position as a sorter at Terra Linda Farms because she had filed a sexual harassment complaint against a Terra Linda Farms' employee.

3. The DFEH is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h), of the Fair Employment and Housing Act. (Gov. Code, § 12900, et seq.) (FEHA or the Act).

4. On June 26, 2007, Wanda M. Kirby, in her official capacity at that time as Interim Director of the DFEH, issued an accusation on the complaint brought by Maria Santillan against Terra Linda Farms, a California corporation. The DFEH filed the accusation with the Commission by mail postmarked that same day, June 26, 2006.

5. The Santillan accusation alleged that Maria Santillan was contracted to work at Terra Linda Farms by labor contractor Green Valley Ag, Inc. (not a party to this action) during the annual onion harvest season. The accusation alleged that, in June 2005, Maribel Rivas reported sexual harassment by Terra Linda Farms' employee Alvaro Juarez and obtained a temporary restraining order (TRO). At Rivas' request, Santillan served it on Juarez. Thereafter, in about August 2005, Terra Linda Farms told Santillan that she would not be recalled to work the next season and Terra Linda Farms refused to recall her to work in June 2006. The DFEH alleged that Terra Linda Farms' conduct constituted retaliation against Santillan for engaging in protected activity, in violation of Government Code section 12940, subdivision (h). The DFEH also alleged that respondent failed to take all steps to prevent discrimination, harassment and/or retaliation in the workplace, in violation of Government Code section 12940, subdivision (k).

6. On June 28, 2007, the DFEH issued and filed an accusation on the DFEH complaint brought by Maribel Rivas against Terra Linda Farms, a California corporation. The DFEH filed the accusation with the Commission by mail postmarked that same day, June 28, 2006.

7. In the Rivas accusation, the DFEH alleged that after Maribel Rivas complained to her foreperson Maria Santillan of being sexually harassed by Alvaro Juarez at Terra Linda

Farms, and after Rivas obtained a TRO against him, Terra Linda Farms refused to recall Rivas to work for the 2006 season, thereby retaliating against her for opposing practices she believed were forbidden by the FEHA, in violation of Government Code section 12940, subdivision (h). The DFEH also alleged that Terra Linda Farms failed to take all steps to prevent discrimination, harassment and/or retaliation in the workplace, in violation of Government Code section 12940, subdivision (k).

8. On September 7, 2007, on written stipulation of the parties, the Commission ordered the Santillan and Rivas accusations consolidated for purposes of hearing.

9. On February 15, 2008, the DFEH filed first amended accusations in the consolidated Santillan and Rivas cases, amending the captions and body of the accusations to name respondents "Terra Linda Farms, a California general partnership, also doing business as Terra Linda Packing," in addition to the originally named Terra Linda Farms, a California corporation (hereinafter, collectively Terra Linda Farms).

10. At all relevant times, Terra Linda Farms was an onion grower and packer located in Fresno, California. Terra Linda Farms was a partnership of Joseph Coehlo and his siblings. Its subsidiary, Terra Linda Packing, was also a partnership of the Coehlo siblings. Terra Linda Farms' ranch foreman was Pete Dominguez, who reported directly to Terra Linda Farms' owner, Joseph Coehlo. In 2005, Alvaro Juarez was employed by Terra Linda Farms to manage its the onion sorting operations in its packing shed.

11. At all relevant times, Terra Linda Farms directly employed a workforce of more than five persons and thereby qualified as an employer under the Act. (Gov. Code, §§ 12926, subd. (d); 12940, subd. (h).)

12. Complainant Maribel Rivas immigrated to the United States from El Salvador and had lived in Avenal, California since 1998. Rivas speaks only Spanish. She is unable to read English and has completed just four years of elementary school in El Salvador. She is a single mother with two sons, Alexander and Roberto Reyes.

13. Complainant Maria Santillan has lived in Avenal California since 1979. Also Spanish-speaking, Santillan has not completed elementary school. She and her husband Ernesto Santillan have six children.

14. Starting in 1995, Terra Linda Farms employed Maribel Rivas and Maria Santillan to work during the onion season, grading, sorting and bagging onions as part of its packing operation run on-site at Terra Linda Farms.

15. The onion season lasts from May or June until August or September each year.

16. In 1996, Joseph Coehlo and his long-time friend, Joe Madrid, whom he had known since high school, agreed that Madrid's company, Green Valley Ag, Inc. (Green Valley Ag), would supply Terra Linda Farms with its seasonal workers, rather than Terra

17. From 1996 on, Green Valley Ag employed and placed farm workers at Terra Linda Farms, as well as at a number of other farms and packing sites in the Fresno region. Green Valley Ag accepted applications from potential farm workers, collected their U.S. Department of Justice [then INS] Form I-9s to verify their employment eligibility status, and issued their paychecks and annual W-2s.

18. Green Valley Ag also ran workplace safety training for the workers at Terra Linda Farms. Amelia Montalvo, who had worked for Green Valley Ag for 20 years, the last 15 as crew supervisor, conducted the training. Montalvo was responsible for overseeing Green Valley Ag's crew operations at each of its different customers' packing sites.

19. Terra Linda Farms compensated Green Valley Ag for its services by paying it a commission, comprised of a percentage added to the farm workers' payroll. The Terra Linda Farms contract represented about 30% of Green Valley Ag's annual income.

20. Starting in May 1996 and continuing each year to 2006, Rivas and Santillan submitted applications to Green Valley Ag at the beginning of each onion season to return to work at Terra Linda Farms. From 1996 through 2005, both Rivas and Santillan were hired by Green Valley Ag and worked the onion season at Terra Linda Farms.

21. Both Santillan and Rivas were capable, reliable workers. In 1997, Santillan was promoted to forewoman at the Terra Linda onion packing facility. Each year at the end of the season, Terra Linda Farmers' owner Joseph Coehlo thanked Santillan personally, praising her work. Rivas was also considered to be a very good worker.

22. Once the onion season ended each year, both Rivas and Santillan performed regular work at other farms, planting, picking and packing crops, including pistachios from September to December, and asparagus and tomatoes from March to May.

Rivas and Alvaro Juarez History

23. Maribel Rivas had known Alvaro Juarez for about six years, since about 1999, when they dated for a brief time. Rivas felt Juarez "forced" her into that relationship. She ended the relationship in November 1999, after Juarez became violent, hit her in the head, and pulled a gun on her.

24. After Juarez assaulted her, Rivas tried to avoid any personal contact with Juarez. However, they both worked in the farming industry in the Fresno area, and at times at the same facilities, where, on occasion, Juarez acted abusively toward Rivas.

The 2005 Onion Season

25. In the 2005 onion season, Maria Santillan, as forewoman at the Terra Linda onion packing facility, oversaw an all-female work crew of about 34 to 36 sorters and baggers. Rivas worked on the crew as a bagger. They worked in Terra Linda Farms' packing shed, where the onion-sorting machine was installed. Trucks brought loads of onions from the fields to the packing facility, where they were poured onto "bands" of the onion-sorting machine's conveyor belt. As the onions moved along the bands, the sorters separated the onions into various grades and sizes. Baggers then gathered the onions into Terra Linda Farms' onion sacks as the onions poured off the ends of the conveyor belt. Rivas, in her job as a bagger, filled 25 and 50 pound bags of onions. The sacks were then transferred onto pallets by a crew of male workers led by male crew chief Javier Esquivel.

26. Terra Linda Farms controlled the daily production schedules at its packing facility i.e., the volume of onions to be packed by the crew each day. Onion packing was a key part of Terra Linda Farms' operations.

27. Terra Linda Farms supplied all machinery, equipment, tools and maintained the packing shed where the onions were sorted. Terra Linda Farms also provided tables where workers could take their lunch breaks, as well as rest room facilities.

28. In 2005, Terra Linda Farms' packing shed manager Alvaro Juarez was responsible for daily operations of the sorting machine, as well as maintenance and repairs. He issued orders to the truck drivers bringing the onions in from the fields on how slowly or fast to deposit the onion loads onto the sorting machine. Juarez also issued orders to Santillan about where to place the crew members on the bands of the conveyor belt, and when he wanted the workers to move to other areas. Santillan then relayed Juarez' orders to the sorters and baggers.

29. Juarez was also in charge of setting the onion sorting machine's speed, controlling the rate at which onions were sent down the conveyor belt. He also set how many onions were to be sorted on a particular day. On occasion, when Santillan told him that the conveyor belt was moving too fast, Juarez responded, "Tell those fucking women to keep moving." Juarez determined whether or not to permit workers to have water with them on the line. Juarez also decided when the sorters and baggers could take breaks. The onion-packing crew's work days often exceeded 12 hours, with some work shifts lasting up to 17 hours. Juarez instructed Santillan what time the workers were to report for work the next morning, either at 4:00 or 5:00 a.m. Santillan conveyed his instructions to the crew. She was not authorized to challenge or overturn Juarez' orders.

30. Alvaro Juarez, in turn, reported to Pete Dominguez, Terra Linda Farms' ranch foreman. Dominguez spent most of his day overseeing the work in the fields or working in the office, leaving the practical day-to-day supervision in the packing shed to Juarez.

31. Juarez had input into hiring crew to work in the Terra Linda Farms' packing shed. When Juarez came across workers he wanted to work at the packing shed, he told Amelia Montalvo, Green Valley Ag's crew supervisor, to hire them.

32. As crew supervisor, Amelia Montalvo made rounds of the different farms where Green Valley Ag's contracted workers were picking or packing. In 2005, she had to visit four separate customers' packing facilities. She came to Terra Linda Farms between once a day to every three days, generally staying for 40 minutes or less.

June 28, 2005 Incident

33. On June 28, 2005, Rivas was working on the Terra Linda Farms' conveyor line, bagging onions, when Alvaro Juarez increased the speed of the machine and sent a load of onions down to Rivas. The onions were coming so fast that Rivas was unable to get them into the sacks, and she said to Juarez, "Stop it because onions [are] falling off." Juarez came down to where Rivas was standing, grabbed her, squeezing the skin on the right side of her waist. Rivas pushed him away from her. He told her, "Behave. If not, I will fire you," adding that he would take matters into his own hands so that she would no longer have a job.

34. Rivas told Santillan about the incident, as well as Pete Dominguez, the ranch foreman at Terra Linda Farms.

35. Within a day or so, Rivas went to a domestic violence center with a friend, Rosa Moreno. On July 11, 2005, Rivas filed a Request for a Temporary Restraining Order with the Superior Court of California, County of Fresno, in the matter entitled Rivas v. Juarez, case number 05CEFL04105. Moreno helped Rivas fill out the forms. In the application for the temporary restraining order, Rivas asserted that she used to date Juarez in 1999, and that she now worked with Juarez at Terra Linda Farms. She further asserted that on July 28, 2005, after an argument about work equipment, "[Juarez] came up behind me and grabbed the skin on my lower back, he pulled and twisted my skin. I pushed him off me then he continued to yell at me to behave if I wanted to work here." In the application, Rivas also described the 1999 incident where Juarez, had slapped her, followed her to her house, pointed a gun at her and told her, "You are going to be sorry."

36. On July 11, 2005, the Court signed the TRO, granting the relief requested by Rivas in the application, including, *inter alia*, that Juarez was not to harass, threaten or assault (sexually or otherwise) Rivas, until the hearing on the Order to Show Cause, set for August 10, 2005. The TRO provided that it had to be served on Juarez at least five days before the hearing.

37. On July 14, 2005, Rivas asked Santillan to give the TRO court papers to Juarez. Santillan was concerned that Juarez could react violently, and believed that she was jeopardizing her own future employment at Terra Linda Farms. Nonetheless, Santillan agreed to Rivas' request because she wanted to help Rivas, and was concerned about Juarez' abusive and sexual conduct toward the female employees.

38. On July 14, 2005, Santillan gave the TRO to Juarez at the Terra Linda office. Juarez asked her, "What's this?" Santillan told him, "I don't know –someone gave it to me to give to you." Juarez followed her out of the office and threw the papers back at her. Santillan picked up the documents, later giving them back to Rivas, explaining that Juarez did not want them.

July 18, 2005 Meeting

39. On July 18, 2005, Santillan and Rivas were summoned to a meeting at Terra Linda Farms' offices. Assembled there were Joseph Coelho and Pete Dominguez of Terra Linda Farms and Joe Madrid of Green Valley Ag. Rivas gave the TRO court papers to Pete Dominguez. Both he and Coelho reviewed them. Santillan told Coelho that she did not know what the documents were about, that she needed her job, that she had nothing to do with the situation and that the problem was "Mr. Alvaro." Dominguez said that he would give the court papers to Alvaro Juarez.

40. At the July 18, 2005 meeting, Coelho then presented Rivas with a two-page document, written in English. The document provided, in pertinent part,

The parties agree that Maribel Rivas will not be required to speak to or otherwise react with Alvaro Juarez in any capacity as part of her job duties. Further, Alvaro Juarez will not supervise Maribel Rivas' activities or have any authority over Maribel Rivas.

The agreement also included a general release and waiver of Civil Code section 1542.

41. Coelho told Rivas that if she signed the agreement it would protect her and she would have her job back. Rivas believed that if she signed, she would be protected, and if she did not, she would be fired. Although Rivas was unable to read the document, she signed it. Joseph Coelho signed for Terra Linda Farms.

Post-July 18, 2005 Incidents

42. After the signing of the July 18, 2005 document, Juarez, Rivas and Santillan continued to work at the Terra Linda Farms packing shed. Santillan and Rivas remained concerned and anxious about their future at Terra Linda Farms, particularly because Alvaro Juarez' began taunting and threatening them that they were going to lose their jobs.

43. In late July and August 2005, Juarez frequently stated in the workplace that he would make sure "these fucking women," referring to Santillan and Rivas, would not have their jobs next year.

44. Juarez told the crew that Rivas was angry because she did not want to have sex with him. He also claimed that Rivas was “going to sue [her co-workers].” At times he yelled at Rivas, “This woman is no good for anything.” He told the crew that they did not have to bother spending time with either Santillan or Rivas because they were both going to be fired.

45. One day, Juarez targeted Rivas by speeding up the onion sorting machine to send a large volume of onions down the conveyor belt directly at Rivas. The onions came so fast that she was unable to bag them.

46. Rivas’ co-workers avoided her, no longer joining her on breaks. They no longer approached her or tried to talk to her. They did not eat with her during meal breaks. Rivas began to feel isolated and alone, like a “strange object.” Rivas was depressed and felt bad, worried by Juarez’ threats that she would not have her job the next year. She felt a sense of hopelessness—that Juarez would never change, even though she had complained.

47. Juarez frequently undermined Santillan’s authority, by telling workers that they did not have to pay attention to her and could ignore her instructions. When Santillan tried to give an order or direction, her crew began to ignore her.

48. Santillan reported the problems with Juarez’ undermining her authority to Amelia Montalvo, who said, “Let’s talk to Pete [Dominguez].” When Santillan complained to Dominguez that Juarez countermanded her instructions, Dominguez told her that he would talk to Juarez. However, the situation did not improve.

49. Santillan had previously enjoyed good relationships with her crew and received praise from the owner, Joseph Coehlo. She was upset that, because of Juarez, her crew no longer wanted to work with her. Some became disrespectful.

50. In late July or in August 2005, a crew member, Anastacia Diaz (also known as Prieta), openly defied Santillan’s work instructions after Santillan told her to pay more attention to sorting the onions as they were passing her by. Diaz used swear words and yelled at Santillan, “Go ahead and stop me,” while holding her work scissors in her hand. Santillan was concerned for her own safety. She reported the incident to both Amelia Montalvo and Coehlo.

51. Joe Madrid investigated the incident, although he did not speak to Santillan as part of that investigation. Crew members said that they had not seen anything. Madrid concluded that Diaz had not threatened Santillan with the scissors.

52. Coehlo was concerned that Santillan was losing control of her crew and that “we need to address this.” He told Madrid, “Do the right thing.”

53. Having been shunned by their co-workers, Santillan and Rivas spent their break time together. One day toward the end of the 2005 season, Joseph Coehlo walked passed,

and stared at them, without speaking. Santillan felt worried, because Coehlo's unfriendly behavior was unusual. She had enjoyed a good relationship with him as the owner in the 11 years she had worked at Terra Linda Farms.

End of 2005 Onion Season

54. On August 11, 2005, the Order to Show Cause on the TRO filed by Rivas came on for hearing before the Fresno County Superior Court. The Hon. David L. Kalemkarian denied the application and terminated the TRO.

55. On August 30, 2005, Rivas filed a complaint against Terra Linda Farms, DFEH case number E 200506 C-0193-00-ase, alleging that Juarez subjected her to a hostile work environment during the 2005 harvest season.

56. Both Santillan and Rivas worked at Terra Linda Farms until September 10, 2005, the end of the onion packing season. Santillan earned \$8,703.86 gross; \$7,138.06 net. Rivas earned \$6,574.52; gross, \$5,973.04 net.

57. At the end of the 2005 onion season, in about September 2005, Maria Santillan approached Joseph Coehlo to ask if she would be coming back the next season. Coehlo responded, "It's too soon to know right now."

58. Santillan felt disquieted at Coehlo's response. She believed Juarez' taunting and threats and that she would lose her job at Terra Linda Farms.

59. Santillan felt nervous, hurt and sad that her job was in jeopardy because she had stood up for Rivas. It made her fearful. She was conscious that she was an older worker, without schooling. She felt sad and nervous, as if all her hard work through the years had been in vain. She became depressed with fear that she would lose her job. She had never missed a day of work in 11 seasons at Terra Linda Farms. The work at Terra Linda Farms made up more than 80% of her income, and she depended on that income to support her family and help her children get through college.

60. Rivas was also anxious about her prospects of being rehired at Terra Linda Farms the next season. She developed sleep problems, and had trouble eating. Juarez' conduct toward her made her feel "physically and morally" ill. She was worried about her financial prospects. As the sole provider for her family, she depended on her work at Terra Linda Farms each year.

Applications for 2006 Onion Season

61. In May 2006, both Santillan and Rivas submitted applications to work at Terra Linda Farms for the 2006 onion season through Green Valley Ag's annual application process.

62. On May 18, 2006, Rivas accompanied a friend, Veronica Solama, to Terra Linda Farms to submit their applications for the 2006 onion season. Solama filled out the applications for herself and Rivas. Rivas turned in the applications, and one for Santillan, to Amelia Montalvo and her assistant, Hector, at the Terra Linda Farms' office.

63. On about May 25, 2006, Santillan contacted Montalvo by telephone to ask about her job. Montalvo told her, "I still don't know what's going to happen."

64. By early June 2006, the onion season was about to begin at Terra Linda Farms. Santillan again called Montalvo to ask if she could return to work. Montalvo said "No." When Santillan asked "Why am I not going to get my job back at Terra Linda Farms?" Montalvo responded, "Because they don't want you here anymore."

65. When the onion harvest began in 2006, Santillan approached Pete Dominguez to ask him to let her have her job back. Dominguez told her that he would talk to Coehlo. Dominguez later told Santillan that she should speak to Madrid at Green Valley Ag.

66. When Santillan talked to Madrid, he told her that, because she was a temporary worker, they could make any decision about her at any time. Santillan asked why she was losing her job. Madrid responded, "The rules, the orders."

67. Santillan became depressed at the prospect of losing her job at Terra Linda Farms. She consulted a medical doctor, Dr. Thurston, and was prescribed anti-anxiety medication. Her relationship with her husband suffered. She stopped dancing with her husband or going on family trips. She cried frequently.

68. Rivas was also worried that she had not been recalled to Terra Linda Farms. She asked Santillan for Montalvo's telephone number and called her, asking if she would be called back to her job at Terra Linda Farms. Montalvo told her, "I've fired three already. You are one of them. There's no work for you." Rivas asked, "Why?" Montalvo responded, "Just because I have laid off three and you are one of them."

69. Rivas felt bad to have lost her job at Terra Linda Farms. She was anxious about the loss of income. As the head of household, she worried how she would support her children. She lost her appetite and neglected her appearance. She lay awake at night worrying. Her head hurt. She felt at a loss as to what to do.

70. Green Valley Ag did not hire either Santillan or Rivas to work at Terra Linda Farms for the June 2006 onion season, or at any time thereafter.

Complainants' Employment Post-Terra Linda Farms

71. In June 2006, Green Valley Ag offered Santillan an alternative job at a company called Telesis Onion, located about 15 minutes away. Santillan accepted, and started work there on June 12, 2006, in quality control. After initially being nervous about learning a new

job with different people, Santillan soon came to enjoy her work at Telesis Onion. She was paid through Green Valley Ag's payroll the first year, at the same hourly rate she had been paid at Terra Linda Farms. Her overtime hours were not the same as they had been when she worked at Terra Linda, and in February 2007, Green Valley Ag paid her \$2,000, to make up the difference, as part of their settlement of her claim against Green Valley Ag.

72. The next year, in June 2007, Telesis Onion hired Santillan directly, and gave her a promotion.

73. The DFEH stipulated not to seek any wage loss for Santillan after she started work at Telesis Onion in June 2006.

74. Rivas unsuccessfully sought alternative work during the summer months of 2006 and received unemployment benefits for that period. From September to December 2006, Rivas worked at Paramount Farms, seven days a week, 12 hours a day, earning the minimum wage of \$7.75 per hour, plus overtime.

75. On December 6, 2006, Rivas fell and broke her arm. As a result, she was unable to work the next year, 2007. When she was able to resume work, she worked at Kena Farms in Avenal, California, sorting pistachios, where she still worked seasonally at the time of the hearing.

76. Rivas felt ongoing distress and depression as a result of losing her job at Terra Linda Farms and felt that she had been unfairly treated for trying to stand up for her rights. Rivas was still experiencing that emotional distress at hearing.

Additional Complaints Filed By Complainants

77. On April 4, 2006, the DFEH closed Rivas' August 30, 2005 complaint against Terra Linda Farms, DFEH case number E 200506 C-0193-00-ase, alleging that Juarez subjected her to a hostile work environment during the 2005 harvest season. The DFEH stated in its Notice of Case Closure that the reason was that "Complainant Elected Court Action.

78. On June 26, 2006, Santillan filed a complaint against Green Valley Ag, DFEH case number E 200506 C-1305-00-rse, alleging that Green Valley Inc. retaliated by not recalling her to work as a foreperson in the 2006 onion season. On February 23, 2007, Green Valley Ag and Santillan entered into a written settlement agreement of this complaint by which Green Valley Ag paid Santillan the sum of \$2,000, and agreed to provide sexual harassment prevention training to its managers and supervisors, while Santillan agreed to withdraw her pending complaint number E 200506 C-1305-00-rse against Green Valley Ag. Further, the agreement provided that Santillan "will not institute or cause to be instituted any action...arising from or attributable to any alleged unlawful practice of the Respondent, its officers, agents or employees...."

79. On June 29, 2006, Rivas filed a complaint against Green Valley Ag, DFEH case number E 200506 C-1323-00-rse, alleging retaliation by Green Valley Ag's not recalling her to her work as a sorter in the 2006 onion season. On about February 8, 2007, Green Valley Ag and Rivas entered into a written settlement agreement of this complaint. By the terms of the settlement, Green Valley Ag paid Rivas the sum of \$3,500, and agreed to train its managers and supervisors in sexual harassment prevention. In return, Rivas agreed to withdraw her pending complaint against Green Valley, and that she "will not institute or cause to be instituted any action...arising from or attributable to any alleged unlawful practice of the Respondent, its officers, agents or employees...." The settlement agreement also referenced complaint DFEH case number E 200506 C-0192-00-ase, filed on about August 30, 2005, by Rivas against Green Valley Ag for alleged sexual harassment. Details of that complaint were not made part of the record.

DETERMINATION OF ISSUES

Statute of Limitations

Respondent argues that neither of the DFEH's accusations issued in these cases was timely and thus must be dismissed because the applicable one-year statute of limitations had expired by one day.

Generally, the FEHA provides a one-year deadline¹ for the issuance of accusations on FEHA complaints. (Gov. Code, § 12965.) The Commission's regulations clarify that the deadline for the accusation's issuance is "on or before the one-year anniversary date of the filing of the complaint." (Cal. Code Regs., tit. 2, § 7408, subd. (c).)

In the Santillan case, the DFEH issued and filed the accusation on June 28, 2007, within one year of the filing of the June 29, 2006 complaint. Thus, the accusation was timely. In the Rivas matter, the DFEH issued and filed the accusation on June 26, 2007, on the one year anniversary date of the date of the filing of the complaint on June 26, 2006. As contemplated by the Commission's regulations, this is also a timely filing. (Cal. Code Regs., tit. 2, § 7408, subd. (c).)²

¹ The FEHA provides a two year statutory deadline, however, for the issuance of accusations in class actions under Government Code section 12961 and for cases alleging violation of Civil Code section 51.7.

² According to the Commission's procedural regulations, "[a]n accusation shall be deemed issued on the date it is filed with the Commission ... and ... shall be filed with the Commission in the manner set forth in section 7406." (Cal. Code Regs., tit. 2, § 7408, subd. (b).) Section 7406, subdivision (b), provides in pertinent part, "Filing of a document is effective if the document is mailed to the Commission by first class, overnight or express mail, registered, or certified mail, postmarked no later than the last day of the time limit...." (Cal. Code Regs., tit. 2, § 7406, subd. (b).) Here, the DFEH filed each of the accusations with the Commission by certified mail, and the postmarks established that the Rivas accusation was filed on June 26, 2007, and the Santillan accusation on June 28, 2007.

Accordingly, given that the record established that the DFEH timely issued and filed both accusations, neither shall be dismissed for not complying with the statute of limitations.

Jurisdiction

Respondent argues that “the DFEH lacks jurisdiction” in this case because complainants engaged in “concerted activity” and that the DFEH should have instead directed the claims to the National Labor Relations Board within its applicable statute of limitations. The DFEH argues that this case is appropriately before the Commission, which has jurisdiction over the alleged violations of the FEHA. (Gov. Code, § 12930.)

Section 7 of the National Labor Relations Act (NLRA) (29 U.S.C. § 157) provides that employees have the right to organize and join labor unions, to bargain collectively, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

In asserting that complainants engaged in “concerted activities” under the NLRA, respondent fails to recognize that this case is brought by the DFEH, asserting its police powers as a public prosecutor to enforce the FEHA to “protect and safeguard the right and opportunity of all persons” to a discrimination-free work environment. (Gov. Code, § 12920; see also *State Personnel Board v. Fair Empl. & Hous. Com.* (1985) 39 Cal.3d 422, 444.) In this action, the DFEH represents the interests of the state. (*Dept. Fair Empl. & Hous. v. American Airlines, Inc.* (June 3, 1991) No. 91-06, FEHC Precedential Decs. 1990-1991, CEB 7, p. 24 [1991 WL 370086 (Cal. F.E.H.C.).])

Moreover, the rights asserted by the DFEH are those arising from the FEHA, in which the state has a substantial public policy interest. (Gov. Code, § 12920.) These rights are independent of the protections created by the NLRA. (See *Delahunty v. Cahoon* (1992) 66 Wn. App. 829, 839 [holding that waitresses’ state law claims that they had lost their jobs in retaliation for their complaints of the restaurant manager’s sexual harassment not preempted by the NLRA, as the state had a substantial interest in the regulation of discriminatory employment practices which did not threaten undue interference with the federal regulatory scheme as to unfair labor practices].)³

³ Respondent also does not address whether complainants are exempted from the NLRA’s exclusion of “agricultural laborers” from the protections of the NLRA. (29 U.S.C. § 152(3).) In *Bianchi, L., & Son* (1954) 107 NLRB 864, 866, for example, the National Labor Relations Board found that individuals employed in a tomato packing shed were agricultural laborers (and thus exempt from the NLRA), because the employer operated a packing shed “as an incident to or in conjunction with” its farming operations, and not as a separate commercial enterprise. In this case, Coehlo, owner of Terra Linda Farms, testified that Terra Linda Packing was a “pass through company” of Terra Linda Farms. And the record showed that onion packing was a key part of Terra Linda Farms’ operations.

Accordingly, respondent did not establish that the DFEH lacks jurisdiction to prosecute these cases, or that the Commission lacks jurisdiction to determine this matter.

Liability

A. Terra Linda's Status as a Joint Employer Under the FEHA

Respondent asserts that Terra Linda Farms cannot be found liable for retaliation under the FEHA as Green Valley Ag was complainants' "sole employer." The DFEH argues that, to the contrary, Terra Linda Farms was complainants' employer within the meaning of the FEHA, under a theory of "dual" or "joint" employment.⁴

"The FEHA establishes a comprehensive scheme for addressing employment discrimination. As a matter of fundamental public policy, the FEHA was intended to protect and safeguard the right and opportunity of all persons to seek and hold employment free from discrimination." (Gov. Code, § 12920; *Brown v. Superior Court* (1984) 37 Cal.3d 477, 485; *Bradley v. Cal. Dept. of Corrections & Rehabilitation (CDCR)* (2008) 158 Cal.App.4th 1612, 1623.)

The FEHA defines "employer" to include "any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities" (Gov. Code § 12926, subd. (d).)⁵ Courts interpret this definition expansively to effectuate the remedial purposes of the Act to prevent, deter and eliminate unlawful employment practices. (Gov. Code §§ 12920, 12920.5 12921, and 12993.)⁶

The Commission's regulations define "employee" as "[a]ny individual under the direction and control of an employer and under any appointment or contract of hire or

⁴ Respondent also argues that the filing of the complaints against both Green Valley Ag and Terra Linda Farms is itself improper. Characterizing the instant complaints, which were filed on June 26 and 29, 2006, respectively, as being filed after the February 2007 Green Valley Ag settlements with complainants, respondent argues that complainants thereby committed perjury for asserting that Terra Linda Farms was their employer, having already claimed that Green Valley Ag was their employer. Predicated as it is on a distorted chronological sequence, respondent's argument is not persuasive. Moreover, complainants did not aver that the farm labor contractor Green Valley Ag was their sole employer. It is respondent who makes that claim. Thus, the assertion that the complaints were perjurious or otherwise improper is without merit.

⁵ "'Employer' does not include a religious association or corporation not organized for private profit." (Gov. Code, § 12926, subd. (d).)

⁶ "Because the FEHA is remedial legislation, which declares '[t]he opportunity to seek, obtain and hold employment without discrimination' to be a civil right (§ 12921), and expresses a legislative policy that it is necessary to protect and safeguard that right (§ 12920), the court must construe the FEHA broadly, not . . . restrictively. Section 12993, subdivision (a), directs: 'The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof.'" (*Vernon v. State of California* (2004) 116 Cal.App.4th 114, 123, citations omitted.)

apprenticeship, express or implied, oral or written.” (Cal. Code Regs., tit. 2, § 7286.5(b).) California Code of Regulations, title 2, section 7286.5, subdivision (b)(5), provides that,

An individual compensated by a temporary service agency for work to be performed for an employer contracting with the temporary service agency may be considered an employee of that employer for such terms, conditions and privileges of employment under the control of that employer. Such an individual is an employee of the temporary service agency with regard to such terms, conditions and privileges of employment under the control of the temporary service agency. (Cal. Code Regs., tit. 2, § 7286.5, subd. (b)(5).)

To determine whether dual or joint employer status exists, California courts have looked at the totality of the circumstances, focusing on the degree of control exercised by the employer over the employees’ terms and conditions of employment. (See *Vernon v. State of California*, *supra*, 116 Cal.App.4th at p. 124 [courts look at the “totality of the circumstances” to ascertain the nature of the work relationship of the parties, emphasizing the extent to which the defendant controls the plaintiff’s employment duties]; *Mathieu v. Norrell* (2004) 115 Cal.App.4th 1174, 1184 [in a sexual harassment and retaliation case, court held that both the employment agency and the client company can be “dual” employers if both have right to exercise control over the employee];⁷ and *Bradley v. CDCR*, *supra*, 158 Cal.App.4th at pp. 1623, 1627 [CDCR deemed “special” employer of a temporary social worker in a CDCR facility under contract with the National Medical Registry, holding that the worker may be considered the contracting employer’s employee “for such terms, conditions and privileges of employment under the control of that employer”]; see also *Metropolitan Water District of Southern California v. Sup. Ct.* (2004) 32 Cal. 4th 491, 506-509].)⁸

⁷ Using the traditional designations used in labor law, the *Mathieu* court described the temporary employment agency Norrell as plaintiff’s “general” employer, while Gulfstream, which contracted with Norrell as its client for the temporary employee, was plaintiff’s “special” employer. (*Mathieu v. Norrell*, *supra*, 115 Cal.App.4th at p. 1184.)

⁸ Given the similarity of the goals shared by the FEHA and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) (Title VII), it is appropriate to examine federal precedent for assistance in construing the FEHA. (See *Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 463.)

The federal courts have long recognized that an individual may be employed by more than one employer, including under Title VII. (See, e.g., *EEOC v. Pacific Maritime Association* (2003) 351 F.3d 1270, 1275 [“Two or more employers may be considered ‘joint employers’ if both employees control the terms and conditions of employment of the employee [citations].”] The EEOC Enforcement Guidance provides that the test for whether employers are joint employers is the degree to which each employer has the right to exercise control over the worker. (EEOC Notice No. 915.002, Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Staffing Agencies and Other Staffing Firms (Dec. 3, 1997).)

A similar “control test” has been applied in federal cases determining whether farm labor contractors and growers to whom the contractor supplies farm labor are joint employers under a wide range of federal laws,

(Continued on next page)

To determine whether Terra Linda Farms is a joint employer for purposes of the FEHA, then, the analysis must focus on the “totality of circumstances,” including the nature of the employment relationship, and the degree of the Terra Linda Farms’ control over the terms, conditions and privileges of complainants’ employment. (*Vernon v. State of California*, *supra*, 116 Cal.App.4th at p. 124; *Bradley v. CDCR*, *supra*, 158 Cal.App.4th at p. 1627.)⁹

Both Santillan and Rivas credibly testified that they had worked at Terra Linda Farms during each successive onion season for 11 years. The record showed that both complainants began as respondent’s “direct” employees and, in 1996, became employees of Green Valley Ag, contracted out to Terra Linda Farms. There was no evidence that this labor contracting arrangement altered any practical aspect of complainants’ employment, other than Green Valley Ag now wrote the paychecks and accepted the job applications each year. The physical location where complainants worked was still at Terra Linda Farms, which owned the packing facility and the onion sorting machine. Terra Linda Farms controlled the daily production schedules, maintained the packing shed, all the machinery and equipment, the workers’ lunch tables, and restrooms. Terra Linda Farms also assigned its employee Alvaro Juarez to manage the onion packing operation.

Complainant Santillan credibly testified to the specific role of Alvaro Juarez. On a daily basis, Juarez directed where complainants and the crew were positioned and their hours of work, including their break times at the packing facility, and whether they could have water on the line. The record established that Juarez regularly issued orders to Santillan, who lacked any authority to countermand them. Santillan in turn passed Juarez’ instructions on to the crew members. In addition, the record showed that Juarez controlled the speed and volume of the sorting machine, at times increasing the speed to such a degree, over Santillan’s protests, that the crew could not keep up.

Further, Terra Linda Farms’ owner Joseph Coehlo illustrated respondent’s pragmatic control over complainants’ working conditions in July 2005. After Rivas’ TRO was made known to Terra Linda Farms, Coehlo presented Rivas with an agreement stating that thereafter, Juarez would not supervise her and that she did not have to talk to him as part of

⁸ (Continued)
most notably the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. (See *Hodgson v. Griffin* (1973) 471 F.2d 235, 237-238 [fruit and vegetable grower was joint employer of field workers supplied by “crew leaders” under FLSA, considering the “economic reality” and degree of control exercised]; *Hodgson v. Okada* (1971) 326 F.Supp. 514, 519 [grower who exercised control, including threatening to fire a farm laborer, held liable under FLSA as joint employer].)

⁹ Respondent asserts that Green Valley Ag was the “sole” employer because it had complainants on its payroll and issued their paychecks. This one factor is not determinative, however. (*Bradley v. CDCR*, *supra*, 158 Cal.App.4th at pp. 1625-1626.) Moreover, the evidence showed that Terra Linda Farms effectively reimbursed Green Valley Ag by compensating it with payroll, plus a commission. Thus, the record established that Terra Linda Farms provided complainants with their wages, albeit indirectly. (*Id.*)

her job duties.¹⁰ Despite this agreement, Juarez continued his control over complainants' work life, for example, by actively undermining Santillan in her role as forewomen, telling crew members that they did not have to pay attention to her. Moreover, the evidence that Juarez told Montalvo whom to add to the payroll, and his repeated threats to fire complainants, indicate that Terra Linda Farms had input into hiring and firing decisions concerning the crew.

The record presented substantial and credible evidence that Terra Linda Farms exercised practical and effective control over the terms and conditions of complainants' employment. Given the totality of the circumstances, Terra Linda Farms will be held liable as a joint employer under the FEHA.¹¹

Effect of Settlement Agreements' Release of Green Valley Ag

Respondent next argues that even if Terra Linda Farms were determined to be a joint employer for FEHA purposes, Terra Linda Farms was released by the language of the February 2007 settlement agreements executed by complainants and Green Valley Ag. Each of these settlement agreements stated that it released Green Valley Ag and its "agents and employees." Respondent asserts that Terra Linda Farms was an agent of Green Valley Ag.

The DFEH counters that Terra Linda Farms was not an agent of Green Valley Ag, and was not a third party beneficiary of the settlement agreements, but instead was "the client being provided a service by [Green Valley Ag]."

Respondent offers no legal support for the proposition that Terra Linda Farms is an agent of Green Valley Ag or that the release of one joint employer releases the other. To the contrary, cases examining liability of joint employers emphasize that liability attaches for that unlawful conduct that is under the control of that employer. (*Bradley v. CDCR, supra*, 158 Cal.App.4th at p. 1629.) Thus, Terra Linda Farms can be held liable for its own allegedly unlawful conduct under the FEHA.

¹⁰ The agreement Coehlo presented to Rivas raises the inference that Juarez had a supervisory role over Rivas and that Terra Linda Farms acknowledged that respondent would intervene to stop Juarez' abusive conduct in the future.

¹¹ Respondent asserts that the "joint employer theory was never fully litigated during the trial in this matter." The record shows the contrary. On January 18, 2008, the Commission held a hearing on respondent's pre-trial motions where respondent asserted, in part, that respondent was not a joint employer. On March 18, 2008, the issue was revisited in respondent's *in limine* motions (and denied without prejudice). The issue of joint employer was then fully litigated throughout the hearing in this matter, and the undersigned administrative law judge asked counsel to address the issue in their closing briefs.

Accordingly, respondent did not establish that the settlement agreements entered into by Green Valley Ag in February 2007 released Terra Linda Farms from liability in this action.¹²

Retaliation

The DFEH asserts that Terra Linda Farms is liable for retaliation against complainants for asserting their rights to a discrimination-free work environment, in violation of Government Code section 12940, subdivision (h). The DFEH argues that complainants were subject to “subtle and overt” adverse treatment by Terra Linda Farms after July 2005: from Juarez’ threats, taunts and undermining of their work status, to the ultimate loss of their jobs at Terra Linda Farms in the 2006 onion season. The DFEH further asserts that the adverse action was a direct result of complainants’ protected activities.

Respondent Terra Linda Farms asserts that it played no role in the decision of whether to recall complainants in the 2006 onion season, as the decision was within the sole discretion of Green Valley Ag. Thus, respondent argues, Terra Linda Farms is not liable for retaliation under the Act. Moreover, respondent asserts that Green Valley Ag had legitimate reasons for not returning complainants to their jobs at Terra Linda Farms.

Government Code section 12940, subdivision (h), makes it unlawful for an employer “to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding” brought under the FEHA. (Gov. Code, § 12940, subd. (h); Cal. Code Regs., tit. 2, § 7287.8.) To establish retaliation under the Act, the DFEH must show that complainants engaged in protected activity, and that respondent subjected them to adverse employment action because of that protected activity. (*Morgan v. Regents of the Univ. of California* (2000) 88 Cal.App.4th 52, 69; *Yanowitz v. L’Oréal USA, Inc.* (2005) 36 Cal.4th 1028, 1042; *Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 476; and *Gemini v. Fair Empl. & Hous. Com.* (2004) 122 Cal.App.4th 1004, 1018.)

Protected Activities

In her July 11, 2005 application for a temporary restraining order, Rivas asserted hostile conduct against her by Juarez based on sex, in a setting when they previously dated, and he had abused, hit and pointed at gun at her. The order issued by the Fresno County Superior Court stated that it was to restrain Juarez from, *inter alia*, sexually assaulting Rivas. The DFEH alleges that Rivas’ temporary restraining order, plus Santillan’s service of that order on Juarez, are protected activities under the FEHA. The record also showed that,

¹² Respondent also asserts that complainants filed claims against Green Valley Ag, “picked up their settlement checks and then filed identical charges against Terra Linda [Farms].” Respondent’s assertion is not supported by the record. The evidence established that Green Valley Ag entered into settlement agreements with complainants in February 2007, eight months after they filed complaints with the DFEH against Terra Linda Farms.

on August 30, 2005, Rivas filed a sexual harassment complaint against Terra Linda Farms with the DFEH, alleging hostile work environment. This decision finds each of these activities: obtaining the TRO, serving the TRO, and the DFEH complaint against Terra Linda Farms, to be within the protections of the FEHA's retaliation provisions. (Gov. Code, § 12940, subd. (h); Cal. Code Regs., tit. 2, § 7287.8, subd. (a).) Whether or not the underlying conduct by Juarez constitutes actionable sexual harassment does not diminish complainants' right to be free of retaliation. Protected activity extends to the situation where, as here, complainants oppose conduct that they reasonably and in good faith believe to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA. (*Yanowitz v. L'Oréal USA, Inc.*, *supra*, 36 Cal.4th at p. 1043; *Miller v. Dept. of Corrections*, *supra*, 36 Cal.4th at p. 474; and *Flait v. North American Watch Corp.*, *supra*, 3 Cal.App.4th at p. 477; Cal. Code Regs., tit. 2, § 7287.8, subd. (a)(1)(C).)¹³

Adverse Action

The record established that in the latter part of July and August 2005, after Terra Linda Farms and Juarez learned of the temporary restraining order, complainants were subjected to adverse treatment by Alvaro Juarez. Juarez taunted them on a regular basis, threatening that they would not have jobs at Terra Linda Farms the next season. He undermined Santillan's status as a foreperson, telling her crew that they did not have to pay attention to her. He spread false rumors about Rivas, claiming that she had been angry because she did not want to have sex with him. He told the crew that they did not have to bother spending time with either Santillan or Rivas because they would be fired. He further claimed that they were going to sue the crew members. On one occasion, credibly testified to by Rivas, Juarez directed a large volume of onions straight to her, so fast that she was unable to bag them. He yelled, referring to Rivas, "This woman is no good for anything." The record also showed that when Santillan complained to Pete Dominguez about Juarez' continuing abusive conduct, Dominguez failed to intervene or stop the behavior.

The evidence showed that, toward the latter part of the 2005 season, Terra Linda Farms' owner Joseph Coehlo's conduct toward complainants changed. Complainant Santillan credibly testified that Coehlo stared at complainants and treated them coldly. At the end of the season, in September 2005, when Santillan asked him if she could come back next season, he told her that it was "too soon to know," while in past seasons he had praised her work. Ultimately, neither complainant was returned to her job at Terra Linda Farms in the 2006 onion season.¹⁴

¹³ Respondent asserts that complainant Rivas' sexual harassment complaint was "so frivolous" that it was dismissed by the DFEH on April 4, 2006. Based on the record, this assertion is inaccurate. The evidence established that the reason that the DFEH closed the investigation of Rivas' August 30, 2005 complaint was because "[c]omplainant elected court action."

¹⁴ Respondent asserts that the DFEH cannot prove retaliation against Santillan, because her transfer to Telesis Onion was to a "better job." The record showed, however, that complainant's move to Telesis Onion was

(Continued on next page)

This record thus establishes that Juarez, Dominguez and Coehlo's conduct toward complainants materially and adversely affected complainants' terms, conditions and privileges of employment. (*Yanowitz v. L'Oréal USA, Inc.*, *supra*, 36 Cal.4th at p. 1052.)

Causation

The record established that complainants had worked at Terra Linda Farms for 11 consecutive onion seasons, from 1995 to 2005. They were both very good workers. Yet after serving the temporary restraining order, complainants were subjected to Juarez' repeated taunts and threats that they would be fired. After Rivas filed her DFEH sexual harassment complaint, both complainants were treated coldly by Terra Linda Farms' owner. Neither was recalled to her job at Terra Linda Farms the next season. This chronological proximity raises the inference of a causal connection between complainants' protected activities and the adverse action. (*Morgan v. Regents of Univ. of California*, *supra*, 88 Cal.App.4th at p. 69; *Gemini v. Fair Empl. & Hous. Com.*, *supra*, 122 Cal.App.4th at p. 1020; and *Flait*, *supra*, 3 Cal.App.4th at p. 476.)

Respondent's Asserted Legitimate, Non-Retaliatory Reasons

Respondent asserts that there were legitimate, non-retaliatory reasons for the decision not to return complainants to work at Terra Linda Farms in the 2006 onion season.

First, respondent asserts that Rivas was not returned to work because she failed to submit an application for the 2006 onion season. The DFEH counters that respondent's claim is not credible, as Rivas needed the job, had held it for 11 consecutive seasons, and had no alternative lined up. At hearing, Rivas credibly testified that on May 18, 2006, accompanied by her friend Veronica Solama, she had submitted an application to Amelia Montalvo at Terra Linda Farms, together with an application for Santillan. The DFEH introduced a copy of Rivas' application into evidence.

Madrid, however, testified that Green Valley Ag had not received an application from Rivas in 2006. Montalvo's testimony was more equivocal. She testified that she did not

¹⁴ (Continued)
abrupt and involuntary, severing Santillan from a work environment and crew with whom she had enjoyed working for 11 years. Further, the record showed that there was a punitive aspect to the reassignment, with respondent's claiming that Santillan was reassigned because she had started to "perform poorly" in late July and August 2005, after seven years of exemplary work performance as a foreperson at Terra Linda Farms. The record also showed that the commute to Telesis Onion for Santillan was 15 minutes further, and that, even though the base pay at Telesis Onion was the same as at Terra Linda Farms, Santillan effectively earned less through loss of overtime hours. Moreover, Santillan was subjected to months of uncertainty about her future job prospects, prior to the reassignment to Telesis Onion in June 2006.

remember whether she had received an application from Rivas.¹⁵ As this decision finds Rivas' testimony to be credible, and that the evidence established that she did submit an application to Montalvo, respondent's assertion that Rivas failed to apply for work in the 2006 onion season is without merit.

Second, respondent asserts that Rivas would not, in any event, have been returned to work at Terra Linda Farms, even if she had submitted an application, because of her "inappropriate" and "troubled relationship with a Terra Linda Farms employee," Juarez. The testimony at hearing established that the relationship had been terminated by Rivas six years earlier, in November 1999. The record was clear that she wanted nothing to do with him. It was Juarez who directed unwanted attention to Rivas, and Juarez whose retaliatory conduct warranted prompt responsive action from Terra Linda Farms. Respondent suggests, in effect, that it is permissible to punish a complaining employee by not recalling her to work and transferring her, while blaming her for the "inappropriate" relationship with the alleged harasser. Respondent's assertion undercuts the fundamentals of the FEHA to provide a discrimination, harassment and retaliation-free work environment.

Respondent argues that Santillan was not returned to work at Terra Linda Farms because she had performed poorly as a supervisor and could no longer effectively "supervise/manage" the crew. Coehlo testified that he became concerned, particularly after Santillan complained to him that Anastacia Diaz had defied her, while brandishing a knife, and had told Madrid, "We need to address this" and "do the right thing." Madrid testified that, as a result of Santillan's poor performance, he decided to transfer her to Telesis Onion.

The DFEH argues that the difficulties in the onion sorting operations in the latter part of the 2005 onion season were attributable to Juarez and his deliberate and consistent undermining of Santillan's role as a foreperson in retaliation for her supporting Rivas.

The record established that Santillan had consistently performed as a capable and highly regarded worker, during 10 prior seasons at Terra Linda Farms, seven of these years as a foreperson. The evidence also established Juarez' active interference and undermining of Santillan's authority after she served him with Rivas' temporary retraining order, and Terra Linda Farms' management's failure to act when Santillan complained about Juarez' conduct. As a result, this decision finds that respondent's allegation that Santillan's "poor

¹⁵ Respondent introduced an August 2007 declaration from Montalvo in which she stated that Rivas *had* submitted an application for the 2006 season but had never followed up to check for available work. At hearing, Rivas testified that she telephoned Montalvo to ask if she was being recalled to work at Terra Linda Farms. Montalvo denied it, asserting that she had never spoken to Rivas by telephone. Elsewhere, however, Montalvo testified that every season she telephoned every employee to let them know about the start of the season.

Balancing Rivas' and Montalvo's testimony, and based on their demeanor at hearing, Rivas is found to be the more credible witness. (Evid. Code, § 780.)

performance” was the reason for her not being returned to Terra Linda Farms was a pretext for retaliation.¹⁶

This decision also finds that Juarez’ pattern of conduct manifested retaliatory intent toward complainants because they objected to his abusive and threatening conduct. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823; *Wysinger v. Automobile Club of Southern California* (2008) 157 Cal.App.4th 413, 421.) Further, Juarez’ conduct is imputed to his employer, Terra Linda Farms. (See Civ. Code, § 2338; Cal. Code Regs., tit. 2, § 7286.6, subd. (d).)

Moreover, circumstantial evidence presented by the DFEH showed that Terra Linda Farms played a role in complainants not being recalled to work there in 2006. Coehlo told Green Valley Ag’s Joe Madrid that Santillan had lost control of her workers and “do the right thing” to respond to this perceived problem. This admonition raises the reasonable inference that Madrid heeded his most lucrative and important client’s directive, and, as a result, decided not to return complainants to Terra Linda Farms.¹⁷ Further, the evidence showed that Rivas filed her DFEH sexual harassment complaint against Terra Linda Farms at the end of August 2005. Around that time, Coehlo’s attitude toward complainants became cold, indicating a significant change. In about September 2005, when Santillan asked Coehlo if she would be returning the next season, he told her it was “too soon to know,” notwithstanding that she had formerly been highly regarded and praised by Coehlo. Moreover, the record showed that, when Santillan asked why she was not allowed to go back to work at Terra Linda Farms, Montalvo told her because “they don’t want you...”

Viewing the totality of the evidence, this decision finds that complainants’ protected activities ultimately led to their losing their jobs at Terra Linda Farms.

Accordingly, the DFEH established that respondent Terra Linda Farms retaliated against complainants as a result of their protected activities by subjecting them to Juarez’ continuing retaliatory conduct and by not permitting them to be recalled to work in 2006. Thus, this decision finds respondent in violation of Government Code section 12940, subdivision (h).

¹⁶ Respondent points to an alleged problem with a second crew member, Graciela Esquivel, who used profanity in the workplace. The record was insufficient, however, to establish when the claimed Graciela Esquivel “incidents” occurred. While respondent claimed they took place in 2005, complainant Santillan’s credible testimony indicated that Graciela Esquivel, wife of male foreperson Javier Esquivel, was a continuing challenge to supervise, for a period of at least five to six years.

¹⁷ This is notwithstanding Madrid’s self-serving testimony to the contrary, that he alone was the decision-maker. Yet Madrid testified that he “absolutely” wanted to keep his customers happy. When asked if he would transfer or “let go” a worker with whom Terra Linda Farms had a problem, Madrid testified, “I have that ability, but that hasn’t occurred to me.”

Failure to Take All Reasonable Steps

The DFEH also alleges that Terra Linda Farms failed to take all reasonable steps to prevent discrimination, harassment or retaliation in the workplace, in violation of Government Code section 12940, subdivision (k).

The record established that, initially when Rivas obtained and Santillan served the temporary restraining order on Juarez, Terra Linda Farms responded by convening a meeting with complainants and Joe Madrid of Green Valley Ag. At that meeting, Joseph Coehlo presented Rivas with a written release agreement, telling her that the document would protect her job and ensure that she did not need to deal with Juarez in the workplace.

Subsequently, notwithstanding the written agreement, Rivas was subjected to Juarez' continuing abusive conduct directed both toward her and Santillan. Santillan complained to Pete Dominguez that Juarez was undermining her standing with their co-workers, and threatening their jobs. Despite being placed on notice of Juarez' continuing abusive and hostile conduct, the record showed that Terra Linda Farms took no steps to investigate or to resolve the situation.

Moreover, after Rivas filed her sexual harassment complaint in late August 2005, there was no evidence that Terra Linda Farms took any steps toward resolving the underlying issue with Juarez. Instead, it resolved not to permit either complainant to return to work at Terra Linda Farms the next onion season.

Thus, the record showed that respondent breached its independent duty as an employer under the FEHA, by failing to adequately investigate and to resolve Juarez' conduct, and by failing to take all reasonable steps to provide a discrimination-free environment in its workplace.

Accordingly, Terra Linda Farms violated Government Code section 12940, subdivision (k).

Remedies

A. Make-Whole Relief

Having established that respondent Terra Linda Farms was found in violation of Government Code section 12940, subdivision (h), the DFEH is entitled to an order of whatever forms of relief are necessary to make complainant whole for any loss or injury she suffered as a result. The DFEH must demonstrate the nature and extent of the resultant injury, and respondent has the burden to demonstrate any bar or excuse it asserts to any part of these remedies. (Gov. Code, § 12970, subd. (a); Cal. Code Regs., tit. 2, § 7286.9; *Dept. Fair Empl. & Hous. v. Madera County* (Apr. 26, 1990) No. 90-03, FEHC Precedential Decs. 1990-91, CEB 1 at p. 34 [1990 WL 312871 (Cal.F.E.H.C.)].)

In its accusation, DFEH requested an award of lost wages, out-of-pocket damages, actual damages for emotional distress, an administrative fine, affirmative relief and such other relief as the Commission deems appropriate.

1. Back Pay

The DFEH does not seek lost wages for complainant Santillan after she began work at Telesis Onion on June 12, 2006. The discrepancy in overtime pay was made up by Green Valley Ag's payment to Santillan in February 2007. There shall be no double recovery. Accordingly, no back pay is awarded to Santillan.

The DFEH claims lost wages for complainant Rivas for the 2006 onion season. In 2005, Rivas earned \$6,574.52 on Green Valley Ag's payroll, while working at Terra Linda Farms. The record showed that Rivas diligently sought alternative work for the 2006 onion season, but was unsuccessful in locating another job. After December 2006, she was unable to work in the 2007 season because of her broken arm.

Thus, this decision finds that compensation for lost wages during the 2006 onion season is appropriate. Terra Linda Farms shall thus be ordered to pay complainant Rivas the sum of \$6,574.52 as lost back pay. That sum will be awarded to complainant, plus interest thereon, at the rate of ten percent per year, compounded annually, from the effective date the earnings accrued until the date of payment.

2. Out-of-Pocket Damages

The DFEH did not prove out-of-pocket costs for either complainant and thus none is awarded.

3. Damages for Emotional Distress

The Commission has the authority to award actual damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses in an amount not to exceed, in combination with any administrative fines imposed, \$150,000 per aggrieved person per respondent. (Gov. Code, § 12970, subds. (a) (3) and (a)(4).)¹⁸

¹⁸ Effective January 1, 2000, the Legislature raised the \$50,000 limit for emotional distress/administrative fines in employment cases to \$150,000 per complainant per respondent. (Gov. Code, § 12970, subd. (a)(3) [as amended by Stats. 1999, c. 591 (A.B. 1670)].) Respondent claims that the \$50,000 cap applies in this case because the Commission's pre- A.B. 1670 regulations refer to the old \$50,000 limit.

The reference is in the Commission's procedural regulations, in a section entitled "Statement to Respondent." (Cal. Code Regs., tit. 2, § 7411.) It is noted that, first, section 7411 is a guide to what information the DFEH may provide to respondents as part of the accusation packet. Second, the actual Statements to Respondent served on Terra Linda Farms reflected the Act's current \$150,000 cap. Finally, the amended statute supersedes the Commission's procedural regulation. Thus, respondent's argument that no more than \$50,000 for emotional distress/administrative fines can be awarded in this case is without merit.

Maria Santillan

Santillan credibly testified, in the later part of the 2005 onion season, that Juarez' conduct undermined her authority as foreperson and by repeatedly threatening her job, made Santillan anxious about her job security and depressed. Santillan felt nervous, hurt and saddened that all of her hard work through the years with Terra Linda Farms was in jeopardy because she had supported Rivas. Santillan had never missed a day of work at Terra Linda Farms in her 11 years there. This job made up 80% of her yearly income and she relied on that income to support her family and to help her children through college. Santillan was conscious that she was an older worker, without schooling, and with few career options.

Despite Santillan's complaints about Juarez's abusive and threatening conduct to Pete Dominguez and Joseph Coehlo in the later part of the 2005 season, Terra Linda Farms did nothing to stop Juarez, nor did they give assurances to her that her job was secure. Santillan was disquieted by Joseph Coehlo's uncharacteristic coldness and noncommittal response at the end of the 2005 season when she asked him if she could return the next year. The continued uncertainty about her job upset her.

At the beginning of the 2006 onion season, when Terra Linda Farms did not return Santillan to her job, she became depressed. Santillan consulted a medical doctor, Dr. Thurston, who prescribed anti-anxiety medication. Her relationship with her husband suffered. She stopped dancing with her husband or going on family trips. She cried frequently.

When Montalvo told her that she was being reassigned to work at Telesis Onion, Santillan was anxious and concerned, saddened that she had lost her job at Terra Linda Farms that she had enjoyed and taken pride in for 11 years. However, once she began work at Telesis Onion in June 2006, Santillan found that she liked her new job, and she felt emotionally better. Thus, this decision does not award emotional distress damages to Santillan past June 2006.

The record established that the emotional distress sustained by complainant Santillan as a result of Terra Linda Farms' violation of the Act, considered in light of the factors set forth in Government Code section 12970, subdivision (b), warrants an award of \$35,000 against Terra Linda Farms.

Maribel Rivas

The record established that, while Rivas was working at Terra Linda Farms toward the end of the 2005 season, Juarez' threats that she would not have her job the next year made her feel "physically and morally," depressed and worried. Rivas credibly testified that she had trouble eating and sleeping.

As a result of Juarez' threats and derogatory comments about her, Rivas' co-workers shunned her, and would no longer talk to her or sit with her on breaks. Rivas felt depressed and isolated, a "strange object." She felt a sense of hopelessness. Even though she had complained to management at Terra Linda Farms about Juarez, it was apparent to Rivas that Juarez was not going to change, and that no-one at Terra Linda Farms going to require him to do so.

At the beginning of the 2006 onion season, when Rivas learned from Montalvo that she would not be recalled to work at Terra Linda Farms, Rivas felt bad, at a loss as to what to do. As a single parent, she worried how she would support her children. She depended on the income each year. She lost her appetite and neglected her appearance. She lay awake at night worrying. Her head ached.

For months, Rivas experienced ongoing distress and depression about how Terra Linda Farms had treated her. She felt that she had been unfairly punished for asserting her rights. Rivas continued to feel that emotional distress at hearing.

The record established that the emotional distress sustained by complainant Rivas as a result of Terra Linda Farms' violation of the Act, considered in light of the factors set forth in Government Code section 12970, subdivision (b), warrants an award of \$55,000 against Terra Linda Farms.

Thus, respondent Terra Linda Farms will be ordered to pay complainant Santillan the sum of \$35,000 and complainant Rivas the sum of \$55,000 in actual damages for their respective emotional distress. Interest will accrue on these amounts, at the rate of ten percent per year from the effective date of this decision until the date of payment.

B. Administrative Fine

The DFEH also seeks an order awarding an administrative fine against Terra Linda Farms. The Commission has the authority to order administrative fines pursuant to the Act where it finds, by clear and convincing evidence, a respondent "has been guilty of oppression, fraud, or malice, expressed or implied, as required by section 3294 of the Civil Code." (Gov. Code, § 12970, subd. (d).) In determining the appropriate amount of an administrative fine, the Commission shall consider relevant evidence of, including but not limited to, the following: willful, intentional, or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for the rights of the complainant; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse, or multiple violations of the Act. (Gov. Code, § 12970, subd. (d).)

Here, the DFEH established, by clear and convincing evidence, that Terra Linda Farms failed to provide a discrimination-free environment to complainants. Respondent failed to address effectively Alvaro Juarez' retaliatory conduct toward complainants, including his taunting and threats that complainants would lose their jobs, continuing after respondent was placed on notice of the conduct. Respondent not only failed to protect

complainants' working environment, but ensured that neither complainant was rehired for the 2006 season, sending a chilling message that protesting discrimination and harassment were to be punished.

On the fact of this case, the DFEH clearly and convincingly established that respondent's conduct in retaliating against complainants for asserting their rights was oppressive and malicious, in deliberate violation of complainants' rights to a discrimination-free workplace. (Civ. Code, § 3294; Gov. Code, § 12970, subd. (d).)

Accordingly, an administrative fine against respondent in the sum of \$15,000 will be ordered, payable to the state's General Fund.

C. Affirmative Relief

The DFEH's accusation seeks a cease and desist order enjoining respondent Terra Linda Farms from engaging in further acts of retaliation in violation of the Act, and asking that respondent be ordered to conduct training and to post notices in the workplace about the prevention of retaliatory practices.

This requested affirmative relief is appropriate, under Government Code section 12970, subdivision (a), to ensure that Terra Linda Farms shall be required to provide retaliation-prevention training for all of its supervisors and managers, including Alvaro Juarez. Respondent shall also be ordered to post notices in the workplace about the prevention of retaliatory practices.

Accordingly, this affirmative relief shall be granted.¹⁹

ORDER

1. Respondent Terra Linda Farms, a California General Partnership, shall immediately cease and desist from retaliating against any employees because the employee opposes any practices forbidden under the FEHA and from failing to provide a discrimination and harassment-free work environment.

2. Within 60 days of the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall pay to complainant Rivas actual damages for lost back pay accrued in the sum of \$6,574.52, together with interest on this amount, at the rate of ten percent per year, compounded annually, from the date such wages would have accrued, to the date of payment.

¹⁹ The DFEH asks for reinstatement only for complainant Rivas. Because Green Valley Ag is the entity that placed the workers on its payroll, and because Green Valley Ag is not a party to this action, reinstatement will not be ordered.

3. Within 60 days of the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall pay to complainant Santillan actual damages for her emotional distress in the amount of \$35,000, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

4. Within 60 days of the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall pay to complainant Rivas actual damages for her emotional distress in the amount of \$55,000, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

5. Within 60 days of the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall pay to the state's General Fund the sum of \$15,000 as an administrative fine, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

6. Within 60 days after the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall provide training for all of its supervisors and managers, including Alvaro Juarez, about the prevention of retaliatory employment practices. Respondent Terra Linda Farms shall secure advance approval from the Department of Fair Employment and Housing of the training provider, and the form and content of the training and shall provide written certification of its completion of the training to the Department and Commission.

7. Within 90 days after the effective date of this decision, respondent Terra Linda Farms, a California General Partnership, shall sign notices which conform to Attachments A and B of this decision and shall post clear and legible copies of these notices in a conspicuous place in the workplace. Posted copies of these notices shall not be reduced in size, defaced, altered, or covered by other material. The notice conforming to Attachment A shall be posted for a period of 90 working days. The copy conforming to Attachment B shall be posted permanently.

8. Within 100 days after the effective date of this decision, respondent Terra Linda Farms a California General Partnership, shall, in writing, notify the Department of Fair Employment and Housing and the Commission of the nature of its compliance with this order.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5 and California Code of Regulations, title 2, section 7437. Any petition for judicial review and

related papers should be timely served on the Department of Fair Employment and Housing, Commission, respondent and complainant.

DATED: November 18, 2008

Caroline L. Hunt
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A

NOTICE TO ALL EMPLOYEES INCLUDING CONTRACTED LABOR AT TERRA LINDA FARMS

After hearing, the California Fair Employment and Housing Commission has found that Terra Linda Farms has violated the Fair Employment and Housing Act by retaliating against employees for complaining about sexual harassment. (Dept. Fair Empl. & Hous. v. Terra Linda Farms (2008) No. 08-____.)

As a result of this decision, Terra Linda Farms has been ordered to post this notice, and to take the following actions:

1. Cease and desist from retaliation.
2. Pay back pay.
3. Pay a monetary award to each complainant for emotional distress.
4. Pay an administrative fine.
5. Conduct training on retaliation prevention.
6. Post a statement of employees', including contracting labor's, rights and remedies under the Fair Employment and Housing Act.

DATED: _____

BY: _____

Authorized Agent of
Terra Linda Farms, a California
General Partnership

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN POSTED FOR NINETY (90) CONSECUTIVE WORKING DAYS IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.

ATTACHMENT B

NOTICE TO ALL EMPLOYEES INCLUDING CONTRACTED LABOR AT TERRA LINDA FARMS

YOUR RIGHTS AND REMEDIES UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

YOU HAVE THE RIGHT TO BE FREE FROM UNLAWFUL RETALIATION

The California Fair Employment and Housing Act prohibits retaliation against an employee for asserting their employment rights. Government Code section 12940, subdivision (h), makes it unlawful for an employer “to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding” brought under the FEHA.

YOU HAVE THE RIGHT TO COMPLAIN ABOUT RETALIATION AND GET RELIEF.

THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING investigates and prosecutes complaints of such retaliation in employment. If you think you have been retaliated against for asserting protected rights under the Fair Employment and Housing Act, you may file a complaint with the DFEH over the internet at www.dfeh.ca.gov or in person, at:

Department of Fair Employment and Housing
1320 E. Shaw Avenue, Suite 150
Fresno, CA 93710-7915
(559) 244-4760 or (800) 884-1684

The DFEH will investigate your complaint. If the complaint has merit, the DFEH will attempt to resolve it. If no resolution is possible, the DFEH will prosecute the case with its own attorney before the Fair Employment and Housing Commission or in court. The Commission or court may order the retaliation stopped and can require your employer to reinstate you and to pay back wages, front pay and other out-of-pocket losses, damages for emotional injury, administrative fines, or punitive damages, and other appropriate relief.

DATED: _____

BY: _____

Authorized Agent of
Terra Linda Farms, a California General
Partnership

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN PERMANENTLY POSTED IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.